BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Annual Report and Analysis of	)	WT Docket No. 07-71
Competitive Market Conditions with	)	
Respect to Commercial Mobile Services	)	

To: The Commission

COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. ("MetroPCS")[1] respectfully submits these comments in response to certain questions posed in the Commission's *Public Notice*, DA 07-1652, released April 6, 2007 (the "*Notice*"), in WT Docket 07-71.[2] In the *Notice*, the Commission announced that it will use the information submitted in this proceeding to evaluate the state of competition among CMRS providers in its Twelfth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services ("*Twelfth Report*").

I. Preliminary Statement

MetroPCS commends the Commission for the detailed analyses of competitive market conditions with respect to the Commercial Mobile Radio

---

[1] For purposes of this Comment, the term "MetroPCS" refers to the parent company (MetroPCS Communications, Inc.) and all of its FCC-licensed subsidiaries.

[2] Because these comments touch upon issues that also are pending in other proceedings, copies of this pleading are being filed as an ex parte presentation in those proceedings as well.

Services ("CMRS Reports") submitted to Congress. MetroPCS is filing these comments in response to the *Notice* in an effort to highlight a few changes in the competitive wireless marketplace since the data for the *Eleventh Report*[3] was gathered that deserve attention in the upcoming *Twelfth Report*.

II. Consolidation and Exit

In the *Notice*, the Commission seeks comment on the effects of consolidation in the mobile telecommunications market."[4] The most dramatic effect of consolidation, in the view of MetroPCS, has been in the ability of the large national carriers to exercise market power in the roaming market.[5] The Commission's report on the state of wireless competition would be incomplete without considering the harm to competition being caused by the refusal of certain carriers, particularly certain national carriers, to provide automatic roaming services on reasonable terms and conditions. A complete and accurate evaluation of the state of CMRS competition as mandated by Congress requires the Commission to recognize the current bleak state of roaming and its negative impact on the public and on competitive regional carriers like MetroPCS[6] and Leap Wireless, on small and rural

---

[3] 21 FCC 10947 (2006).

[4] *Notice*, page 5.

[5] MetroPCS recognizes that the Notice *omits* specific questions on roaming due to the separate ongoing proceeding on roaming obligations (WT Docket No. 05-265). However, since roaming is such a big competitive issue at present, it merits mention here particularly since the Commission specifically asked about the effect of consolidation on the wireless marketplace.

[6] MetroPCS has grown to serve millions of subscribers in major urban areas. Many of our subscribers belong to demographic groups historically underserved by the

(continued...)

carriers, and on potential new entrants and designated entities.[7]

Recent changes in the wireless marketplace have exacerbated the competitive impact of discrimination in the offering of roaming services. A clear disparity in market power now exists. As a result of recent consolidation, there now are four national carriers rather than six, reducing the number of potential roaming partners for the regional and smaller carriers. The result is that such second tier carriers often are confronted with "take it or leave it" roaming choices from the large national carriers, if they even are offered automatic roaming agreements at all.

The situation is further exacerbated by the limitation that roaming can only be efficient between carriers using similar air interfaces. Although there are four national carriers in many markets, the differences in air interfaces effectively mean that there really are only one or two possible roaming partners in each market. This results from the fact that the air interface technologies used by carriers -- such as CDMA, GSM and iDEN -- are incompatible with one other. As a general rule, consumers cannot roam on the systems of carriers using a technology incompatible

(...continued)

large national carriers. MetroPCS provides its subscribers flat-rate wireless services with no contract.

[7] The Commission has under consideration issues related to adopting an automatic roaming rule and, having already determined that roaming is a common carrier service under Title II of the Communications Act, enforcing the Act's provisions *See* Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, WT Docket No. 00-193; Reexamination of Roaming Obligations of Commercial Radio Service Providers, WT Docket No. 05-265, *Memorandum Opinion and Order and Notice of Proposed Rulemaking,* 20 FCC Rcd 15047 (2005) ("*Roaming Proceeding*").

with their own. For example, the handset of an AT&T customer using GSM cannot roam onto the Verizon network where CDMA is utilized. Thus the four large national carriers have and exercise market power, usually in the form of a monopoly or duopoly, in the wholesale (carrier-to-carrier) market for roaming services. The result is that they either refuse to deal with the regional, rural, and small carriers or extract supra-competitive rates or other unreasonable terms.[8]

The consolidation from six to four national carriers has had the additional detriment of increasing the likelihood that the service area of the national carrier with the matching air interface technology will overlap the service area of the smaller carrier requesting automatic roaming. Where coverage areas partially overlap, the national carrier has a heightened competitive incentive to deny a roaming agreement to the regional or smaller carrier with whom it competes in part of the market because entering into such an agreement can be expected to improve the competitive position of the smaller carrier in the overlap areas. The disparity and its competitive impact are simple to understand: the national carrier already covers the vast areas it wishes, and therefore has little incentive to enter into an agreement with a regional carrier that is a substantial competitor in some markets. It is a one-way street – the regional carrier needs automatic roaming to effectively compete for a segment of the potential customer pool, but the large carrier does not.

---

[8] The arguments and data justifying our conclusions are set forth in the comments and reply comments of MetroPCS and others, including Leap Wireless, SouthernLINC Wireless, and the Rural Telecommunications Group (RTG), in the *Roaming Proceeding*, *id.*

The national carrier is content to deny the smaller carrier roaming to inhibit competition, regardless of the impact on the public.

The Commission no longer can ignore the competitive impact of the size disparity and no longer can rely solely on marketplace forces and voluntary arrangements to promote competition in the roaming market. The rise of large national carriers who do not need smaller regional and rural carriers to provide service has changed the competitive landscape for all CMRS services. Notably, this is not a problem being experienced only by rural carriers that may continue to operate in areas not served by large national carriers. MetroPCS operates in the highly competitive markets of major metropolitan areas where it competes head-to-head with every nationwide carrier that would be a suitable roaming partner in areas outside MetroPCS' service areas.

One outgrowth of the negative impact of industry consolidation on the roaming market is the fact that mergers are regularly being opposed on the grounds that approval will not serve the public interest due to harm to roaming opportunities. *See, e.g.*, *AT&T and Cingular Wireless*, 19 FCC Rcd 21522 para. 166 to 185 (2004) (objections filed by Consumers Union, Consumer Federation of America, Public Service Communications, National Telecommunications Cooperative Association and OPASTCO to the Cingular/AT&T Merger on the grounds, *inter alia,* that approval would adversely affect roaming rates and services); *Midwest Wireless Holdings and ALLTEL*, 21 FCC Rcd 11526, paras. 98 to 104 (2006) (U.S. Cellular raises concerns about the effect of the Midwest/ALLTEL merger on the availability and cost of roaming services in Southern Minnesota); *Western Wireless and ALLTEL*, 20 FCC Rcd 13053, paras. 99 to 109 (2005) (several petitioners and commenters raise concerns about the impact of the Western Wireless/ALLTEL merger on the availability and cost of roaming services). The Commission found it to be appropriate in these instances to impose special conditions on the merged entity, or to adopt structural remedies to address these concerns. *See, e.g.*, *Western Wireless/ALLTEL*, *supra* at para. 108 (*grant conditioned on merged company abiding by a reciprocal roaming obligation*); *AT&T/Cingular*, *supra* at para. 182 (same); *Midwest/ALLTEL*, *supra* at para. 103 (same). The reality is that, as the wireless industry continues to consolidate, the Commission will be faced with more and more legitimate claims of harm to the roaming market as a result of consolidation.[9]

A. The Public Is Harmed When Roaming Agreements Are Not Allowed on Reasonable Terms

MetroPCS provides wireless services on a low cost, no-contract, flat fee basis. Many MetroPCS customers cannot pass the credit checks required by national carriers to initiate service. In addition, MetroPCS' service is provided for an unlimited number of minutes in the local metropolitan service area for one low price. This basically means that consumers needing or wanting extended roaming services do not have the ability to replicate their MetroPCS service by going to one

[9] The best way to address this is not in the context of merger approvals, but rather in a more general policy proceeding.

of MetroPCS' competitors with a larger footprint. The bottom line is that - - if MetroPCS is unable to enter into fair roaming agreements on reasonable terms - - its customers have no choice but to go without important roaming services, to their detriment.

Wireless subscribers increasingly expect their handset to work when they travel outside their local metropolitan area – whether they travel once a year or more often. In addition, public safety is enhanced when consumers can initiate a call wherever they may be traveling. The barriers being raised by the national carriers do not serve the public interest and are allowing the national carriers to extend their dominance in their existing markets into new markets previously occupied by their roaming partners.

III. Barriers To Entry

The *Notice* asks whether there is access to sufficient spectrum in the wireless marketplace to prevent spectrum from becoming a significant barrier to entry in the CMRS market.[10] In the view of MetroPCS, the Commission is to be commended for taking the regulatory steps necessary to recapture spectrum, to clear spectrum and to refarm spectrum in a manner that has led to recurring auctions of broadband wireless spectrum in reasonable intervals. The occurrence of Auction 58 (Broadband PCS) and Auction 66 (AWS-1), and the imminence of Auction 71 (Broadband PCS) and the 700 MHz Upper and Lower Band commercial auction,

---

[10] *Notice*, p. 6.

have helped prevent spectrum shortages from acting as barriers to entry.

However, the Commission must be vigilant to prevent spectrum that deserves to be auctioned for commercial purposes from being diverted to other uses. Nextel/Sprint managed to co-opt 10 MHz of spectrum in the 1900 MHz band that otherwise would have been available for auction.[11] Cyren Call sought to reallocate 30 MHz of commercial spectrum in the 700 MHz band to public safety use, and Frontline is seeking to encumber 10 MHz of Upper 700 MHz spectrum as part of a public/private partnership with public safety that will render the band largely unattractive for most commercial service providers.[12] M2Z is seeking to secure without auction a nationwide allocation of 20 MHz of as-yet-unallocated AWS spectrum for a wireless broadband Internet access service.[13] These kinds of off-line proposals threaten to undermine the steps the Commission and the Congress have taken to assure sufficient auctionable spectrum to satisfy increasing demands for new and improved commercial spectrum. Further, spectrum channelization policies also have an effect on opportunities for small or regional carriers. Without a

---

[11] *See* Improving Public Safety Communications in the 800 MHz Band, *Report and Order,* WT Docket No. 02-55, 19 FCC Rcd 14969 (2004) (*800 MHz Report and Order*.)

[12] *See* Reallocation of 30 MHz of 700 MHz Spectrum (747-762/777-792 MHz) from Commercial Use, Assignment of 30 MHz of 700 MHz Spectrum (747-762/777-792 MHz) to the Public Safety Broadband Trust for Deployment of a Shared Public Safety/Commercial Next Generation Wireless Network, RM No. 11348, Order, DA 06-2278 (rel. Nov. 3, 2006).

[13] *See* Wireless Telecommunications Bureau Sets Pleading Cycle for Application by M2Z Networks, Inc. to Be Licensed in the 2155-2175 MHz Band (WT Docket No. 07-16), DA 07-987, 2007.

sufficient number of smaller spectrum blocks available in relatively small geographic areas,[14] spectrum opportunities will not exist for small and regional carriers, or new entrants.

The *Notice* also asks whether "the recent auction of AWS spectrum helped existing carriers access additional spectrum."[15] The answer is yes, as evidenced by the fact that MetroPCS acquired approximately $1.4 billion of licenses which will enable it both to enhance services in some existing territories and to expand service into new territories. MetroPCS notes, however, that the AWS spectrum has not yet been cleared of previously licensed government and commercial users. Preliminary investigation indicates that it will take concerted action by both government and private industry in order for this clearing process to be accomplished in a timely fashion so that the pro-competitive aspects of the AWS allocation can be enjoyed. Also, the Commission must be vigilant to ensure that reasonable applicant expectations regarding future spectrum opportunities are met. For example, since spectrum in the 700 MHz block was scheduled to be auctioned when the AWS auction took place, applicants took that into consideration when they bid. The Commission should not take actions which effectively remove 700 MHz spectrum from the regular commercial pool. All of the currently allocated CMRS spectrum is necessary to allow CMRS carriers to have adequate spectrum to offer next generation services.

---

[14] Carriers desiring larger blocks of spectrum in larger areas are free to aggregate adjacent blocks in contiguous markets to meet their needs.

[15] *Notice*, p. 6.

IV. Price Rivalry

The Notice asks "[t]o what extent do new types of pricing plan reflect price rivalry among CMRS providers?" A recent service offering by Sprint/Nextel appears to be a direct response to competitive pricing and service plans offered by MetroPCS and Leap Wireless (another flat fee, all-you-can-eat wireless service carrier). Press reports indicate that Sprint/Nextel is trialing a flat-rate service in certain of its markets.[16] This development demonstrates that the innovative service and pricing plans being offered by regional carriers such as MetroPCS are having a pro-competitive impact on the wireless market.

CONCLUSION

The foregoing premises having been duly considered, MetroPCS respectfully requests that these comments be included in the *Twelfth Report*.

Respectfully submitted,

MetroPCS Communications, Inc.

By: /s/ Carl W. Northrop
Carl W. Northrop
David R. Siddall
PAUL, HASTINGS, JANOFSKY & WALKER LLP

[16] "Sprint's Rivals Seen Benefiting From its Woes," CBS MarketWatch, January 9, 2007.

875 15th Street, NW
Washington, DC 20005
Telephone: (202) 551-1700
Facsimile: (202) 551-1705

Mark A. Stachiw
S.V.P., General Counsel and Secretary
MetroPCS Communications, Inc.
8144 Walnut Hill Lane, Suite 800
Dallas, Texas 75231
Telephone: (214) 265-2550
Facsimile: (866) 685-9618

Its Attorneys

May 7, 2007

LEGAL_US_E # 75044261.4